

# Consumers Shortchanged? Oversight of the Justice Department's Mortgage Lending Settlements

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1. Is the primary purpose of the Justice Department's record settlements with BofA and Citigroup to provide financial relief to harmed homeowners or is it rather designed to funnel money to politically powerful activist groups?
  - a. The settlements order BofA and Citigroup to pay a minimum of \$150 million to politically favored non-profit groups like the NCLR (National Council of La Raza) and NeighborWorks America, a congressionally chartered non-profit organization. In 2012, La Raza received about \$9 million grant money and NeighborWorks America received \$212 million grant money from the government. Both groups function as distributors: they in turn give out grants to smaller alliances and coalitions of non-profits as well as to individual non-profit groups.
  - b. In addition, the settlements stipulate that BofA and Citigroup earn 2 dollars' worth of credit against their consumer relief commitment for every dollar they donate above the required minimum but only 1 dollar for every dollar they donate as direct relief to individual homeowners. This is a tremendous incentive for the banks to donate to activist groups and a tremendous disincentive to give money directly to harmed consumers.
2. What is the reason for these extraordinary settlement provisions that seem to have been designed with the intention to benefit a large network of non-profit organizations?
  - a. Over the last 50 years, the US government has fostered the creation of an enormous network of left-leaning, non-profit, activist groups. Government – federal, state, local – and non-profit groups have formed a symbiosis whose stated purpose is to help poor and vulnerable citizens thrive. However, the real purpose of this symbiosis is different. It primarily serves to increase the power, control and reach of government via an army of community groups. It increasingly crowds out what is essential for a democratic Republic: a vibrant civic society that is self-reliant and capable of solving problems. Such a civic society is indispensable as buffer between the awesome power of government and individual citizens.
  - b. In 1960, the Government of the United States gave very little money to non-profit organizations. This has changed dramatically over the last 50 years. Here are some numbers from the Urban Institute's 2013 National Survey of non-profit groups: in 2012, governments in the US (federal, state and local) gave \$137 billion to non-profit organizations in the form of grants or contracts (350,000 grants and contracts with 56,000 nonprofit organizations). Eighty-one billion dollars of those \$137 billion went to social service non-profit organizations (affordable housing groups, legal aid groups, civil right groups, ethnic groups). There were approximately 200,000 contracts and grants with about 30,000 social service non-profits in 2012. On average, 6 to 7 grants and service contracts per non-profit.
  - c. Social service non-profit organizations are the direct beneficiaries of the unusual settlement terms. More precisely, special kinds of government approved and

government certified non-profits will profit from the \$1 dollar paid, \$2 dollars credited rule. These groups are HUD approved housing counselling agencies, Community Development Financial Institutions (CDFIs), legal aid organizations that receive funds from IOLTA (Interest on Lawyers' Trust Account) and community development corporation non-profits (CDCs). Any surplus amounts and any compensatory payments will go to NeighborWorks America and to organizations that receive money from IOLTA accounts.

3. Let's have a closer look at one of these groups that will profit from the settlements' terms. The group is representative for many.
  - a. The name of the group is NeighborWorks Orange County. It's a 501(c)(3) tax-exempt non-profit organization based in Orange County, California. The reason for its public charity status is listed on Schedule A of its 990 form 2012 as: "An organization that normally receives a substantial part of its support from a governmental unit or from the general public."
  - b. NeighborWorks Orange County is a chartered member of NeighborWorks America. As previously mentioned, NeighborWorks America is a congressionally chartered non-profit organization. Its real name is Neighborhood Reinvestment Corporation and it was founded in 1978, the year after the passage of the Community Reinvestment Act. The assistant HUD secretary and a member of the Federal Reserve are on the board of directors together with high officials from other financial regulatory agencies.
  - c. In 2012, the group received \$212 million from government grants for housing counselling, something called "neighborhood stabilization", community development and foreclosure prevention. The group has around 240 chartered members and it uses its government grants to give out grants itself to its chartered members.
  - d. NeighborWorks Orange County is an affiliate of the National Council of La Raza (NCLR). In 2012, La Raza received \$9 million in government funds. It also functions as a conduit of grants to other groups.
    - a. NeighborWorks Orange County is a HUD certified Housing Counselling agency. There are approximately 2,400 HUD-approved housing counseling non-profits in the US. HUD refers to them as housing counseling agencies. For 2015, HUD received \$47 million for its housing counselling partners and is asking for \$60 million for 2016. HUD estimates that "HUD Housing Counseling grants will leverage approximately \$296 million in other public and private funding."
    - b. NeighborWorks Orange County is certified by the US Treasury Department as a Community Development Financial Institution (CDFI). The Treasury Department provides funds to CDFIs through various programs.
    - c. NeighborWorks Orange County is a community development corporation (CDC).
    - d. In addition, the group functions itself as a distributor of grants and gives out grants to multiple other groups, among them the Legal Aid Society of Orange County which is the recipient of many millions of dollars of government grant money a year and probably also receives money from IOLTA. In 2012, the Legal Aid Society received \$165,000 from NeighborWorks Orange County for education and counselling.
    - e. In 2012, NeighborWorks Orange County received \$3.8 million dollars in government grants. In 2009 it received around \$5 million, in 2010 around \$8 million and in 2011 around \$3 million in grants.
    - f. Not all of its money came from taxpayers. In 2012, NeighborWorks Orange County received \$135,000 from private enterprises, almost all of them banks (among them are

Bank of America, Citibank, Chase and Wells Fargo). Which means that 3.4% of its money came from private business and 94.6% from taxpayers. It's typical that so many banks contribute to a housing non-profit like NeighborWorks Orange County. It's basically protection money. Donating to groups that are certified and approved by government agencies is not rarely an attempt to buy protection against being singled out for punishment by the Department of Justice.

- g. Because of the layering effect of government fund distribution, it is not at all immediately obvious how reliant these non-profits are on government funding. Without taxpayer funding, few groups would survive.
  - h. As a HUD housing counselling agency, a CDFI and a chartered member of NeighborWorks America, NeighborWorks Orange County is perfectly positioned to receive funds from the BofA and Citigroup settlements. It's in the interest of both banks to donate huge amounts of money above the required minimum to groups like NeighborWorks Orange County because of the massive incentive given through the "pay 1 dollar, receive 2 dollars in credit" rule.
4. What is NeighborWorks Orange County actually doing with the millions of dollars of government money?
- a. In 2012, \$1.8 million were paid to the group's 26 employees. That's an average salary of about \$80,000 per employee.
  - b. More than \$200,000 were given as grants to other activist groups.
  - c. Payments to affiliates totaled more than one million dollars.
  - d. Management, legal expenses, accounting, office expenses, travel, conferences, insurance and other expenses amounted to about 800,000 dollars.
  - e. What exactly are its 26 employees doing? They are navigating the various federal and state government programs designed to let people buy a house who can't afford to do so and to avoid foreclosure for those who cannot pay their mortgages. Examples are programs like "Making Home Affordable" which is an official program of the Departments of the Treasury and HUD or HARP, The Home Affordable Refinance Program, or Keep Your Home California, a program of the CalHFA Mortgage Assistance Corporation, a nonprofit organization that receives federal funding for California homeowners. The group also has access to down payment assistance programs that are only available through non-profit organizations. An example of such a program is the CalHome Loan Program. By the way, the group also works as a real estate agency listing houses for sale and it will as it says on its website "aggressively market your property."
  - f. You might ask yourself if NeighborWorks Orange County's \$3.5 million of taxpayer money is well spent navigating the labyrinth of government easy credit access programs that are also financed by taxpayers. And all in order to let people buy houses that they cannot afford. This is a service to whom exactly? It's amazing to have to ask that question just 7 years after the financial meltdown.
  - g. It seems then that Bank of America's punishment consists in forcing it to finance exactly the same kind of behavior that Bank of America is being punished for. It gets even more hair-raising when you consider that BofA itself had very little bad mortgage paper on its books and was pressured by the government to buy two failing companies, Merrill Lynch and Countrywide, who had lots of it.
5. The Crony Advocacy Cycle: symbiosis of government and non-profit organizations
- a. Billions of dollars of taxpayer money flow each year from executive agencies and congressional appropriations to a vast network of politically progressive, activist groups.

Many of these groups are driven by ideological visions of achieving economic equality via distribution and retribution. Overall, they are far to the left of the American public. Politically, they are enormously powerful. Some of them have access to the highest levels of state and federal government. Executive agencies like HUD refer to them as partners and as private non-profit agencies.

- b. What role do the activists play in shaping government policies, laws and regulations? Let's have a look at another concrete example: the NCLR, National Council of La Raza. The group receives millions of dollars in government grants each year. Between 1989 and 2014, the organization's political action committee, its employees and their family members spent around \$100,000 in campaign contributions on individual politicians on the federal level. The lion's share went to Democratic members of Congress. During the same time period, La Raza spent more than \$6 million dollar on lobbying efforts, in particular on immigration and health legislation.
- c. Between 2002 and 2014, the NCLR submitted at least 26 comments on proposed federal regulations. Several of its employees sat or are sitting on federal advisory committees. In fact, activist groups often closely participate in administrative lawmaking as well as in rule execution and rule enforcement. The NCRC, National Community Reinvestment Coalition, for example, is one of several extremely influential affordable housing non-profits that are currently working with HUD on re-writing AFFH regulation (AFFH stands for Affirmatively Furthering Fair Housing).
- d. Not only does Congress delegate significant parts of its legislative powers to executive agencies, executive agencies delegate parts of their administrative lawmaking power to their crony non-profits partners as well as to crony capitalists. In 2010, for example, the FCC proposed net neutrality regulation and asked six industry lobbyists to draft the rules. This double and triple delegation of power is unconstitutional as is brilliantly explained and put into deep historical context by Prof. Philip Hamburger (Columbia Law School) in his new book "Is Administrative Law unlawful?"

#### Conclusion:

A new dimension is added to the crony advocacy system with the BofA and Citigroup settlements: the terms of the settlements partly order and partly incentivize the two banks to directly contribute massive amounts of money to the government/non-profit complex. The \$1:\$2 ratio incentive shows clearly where the government wants banks to spend their money: not on individual customers (which would be the direct and efficient customer relief) but on crony non-profit groups.

On the surface, these groups are private, tax-exempt non-profit organizations. In reality, they have - over the last twenty years or so - mutated into hybrid entities, wiping out the clear line between public and private sector. This is a dangerous development since a society needs lots of government free breathing space to be creative, productive, prosperous and happy.